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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/650,335 08/28/00 GIACOMEL J 12643/210

024349 QM02/0821  
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EXAMINER

FLANIGAN, A

ART UNIT	PAPER NUMBER
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3743

DATE MAILED:

08/21/01 9

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/650,335	GIACOMEL, JEFFREY A.
	Examiner	Art Unit
	Allen J. Flanigan	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 July 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 8, and 10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 2, 4, 6, 7, 9, 11, and 20-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- |   |  |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                    | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5-7</u> . | 20) <input type="checkbox"/> Other: _____                                    |

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Applicant's election of the species of Fig. 16 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 22 is objected to as it contains a minor typo (should read, "parallel to the fin surface areas" in the last two lines).

Claims 3, 5, 8, and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Perez.

Note in particular the Figs. 6 and 7 embodiments of Perez (fins on both ends) and the Fig. 14 embodiment (regarding claim 4).

Claim 9 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schwartzstein.

Claim 11 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moir et al.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Eisenhauer.

Anticipation does not require that the prior art teaches what the subject application teaches, but only that the claim read on something disclosed in the reference. ***Kalman v. Kimberly Clark Corp., 218 USPQ at 789.*** The heat transfer member 20 of Eisenhauer shows every element of claim 20 (the upper end of Eisenhauer's member 20, including upper surface 21 reads on the claimed "output heat transfer element"). The recitation that the "output heat transfer element" is "exposed to an ambient temperature environment" is a statement of intended use which cannot distinguish a structure known in the prior art. ***In re Keegan, 141 U.S.P.Q. 512.***

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Root et al.

See Root et al.'s extruded aluminum heat sink 10. Note the comments made in regard to the rejection of claim 20 above; the fins of Root et al. are clearly capable of being inserted into a food mass to transfer heat to or from it.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perez.

The pins of Perez are said to be made of "thermally conductive material" (claim 1 of Perez). One of ordinary skill in the art would clearly recognize all of the materials recited in claim 6 to be well-known members of this generic category (materials which conduct heat), and it would have been obvious to make Perez of any of these materials. Regarding claim 21, the Examiner hereby takes official notice that the use of coatings of highly heat conductive materials (such as diamond or copper) on heat transfer surfaces is of such notorious character in the art that citation of a reference to such effect is deemed unnecessary; ***In re Malcolm, 54 U.S.P.Q. 235.***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 8:40-5:10.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703) 308-1935. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Allen J. Flanigan  
Primary Examiner  
Art Unit 3743

AJF

August 18, 2001

**Attachment for PTO-948 (Rev. 03/01, or earlier)**

**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.